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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,296	12/05/2003	Tadlington A. Stout	AQU400US	2162

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EXAMINER
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NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/729,296	<b>Applicant(s)</b> STOUT ET AL.	
	<b>Examiner</b> Tam Nguyen	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-20 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-10 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 11 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

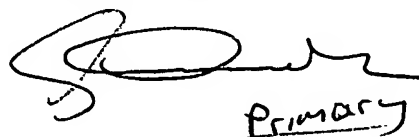
**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
Primary

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 8 is objected to because of the following informalities:

In Claim 8, on line 3 in the phrase, "the single dome-shaped bell". The word "the" should be removed from this phrase.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 3 and 4 each recite the limitations "the handle axis" and "the bell axis" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weissbuch (5,478,312) in view of MacKechnie (4,623,142).

3. As to claims 1 and 10, Weissbuch discloses an aquatic exercise device comprising a dome shaped bell (12) having an opening opposite an apex of the bell and a handle (10) connected to the interior of the bell and extending from the apex through the opening (see Fig. 6). Weissbuch does not disclose a plurality of apertures extending between an interior and an outer surface of the dome-shaped bell that is configured to allow water flow when the device is moved through water. MacKechnie discloses a similar hand held aquatic exercise device having a hollow ball that includes a plurality of apertures extending between an interior and an outer surface of the ball to allow water flow when the device is moved through water (see Fig. 9B). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine MacKechnie's apertures with Weissbuch's device to provide relatively less exercise resistance so that a greater portion of the population, such as children or senior citizens, can also use the modified device without undue stress.

4. As to claim 2, Weisbuch does not disclose that the bell also includes a plurality of fins symmetrically arranged along the outer surface of the dome shaped bell. MacKechnie discloses a hand held aquatic exercise device having a bell that includes a plurality of fins (3,4) symmetrically arranged along the outer surface of the dome shaped bell wherein at least two of the fins are longitudinal and extend from the apex to the opening of the bell (see Fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine MacKechnie's fins with Weissbuch's device to provide the user with various resistances depending on the direction of movement of the modified device through water.

5. As to claims 3-5, Weissbuch and MacKechnie disclose a modified exercise device as described above. Weissbuch also discloses that the handle includes a longitudinal axis (34) that is parallel to and coincides with the bell axis, and a portion of the handle is outside of the interior of the bell (see Fig. 6).

6. As to claims 8 and 9, Weissbuch and MacKechnie disclose a modified exercise device as described above (see discussion of claim 1). Weissbuch also discloses that the device further comprises another dome-shaped bell connected to the handle opposite the dome shaped bell and the handle axis and the bell axis (of the first bell) coincide with the bell axis of this (second) bell and the bell axis of the second bell extends from it's apex to its opening (see Fig. 6).

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weissbuch (5,478,312) in view of MacKechnie (4,623,142).

7. As to claims 12, Weissbuch discloses an aquatic exercise device comprising first and second dome shaped bells and a handle connected to each bell as substantially claimed wherein each bell includes an outer surface (see Fig. 6). Weissbuch does not disclose a plurality of apertures on the outer surfaces of the dome-shaped bells or a plurality of fins symmetrically arranged along the outer surfaces. MacKechnie discloses a similar hand held aquatic exercise device having a hollow ball that includes a plurality of apertures extending between an interior and an outer surface of the ball to allow water flow when the device is moved through water (see Fig. 9B). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine MacKechnie's apertures with Weissbuch's device to provide relatively less exercise

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resistance so that a greater portion of the population, such as children or senior citizens, can also use the modified device without undue stress. MacKechnie also discloses a hand held aquatic exercise device having a bell that includes a plurality of fins (3,4) symmetrically arranged along the outer surface of the dome shaped bell wherein at least two of the fins are longitudinal and extend from the apex to the opening of the bell (see Fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine MacKechnie's fins with Weissbuch's device to provide the user with various resistances depending on the direction of movement of the modified device through water.

8. As to claims 13 and 14, Weissbuch and MacKechnie disclose a modified device as described above (see discussion of claim 12). Weissbuch also discloses a handle axis, a bell axis and at least two longitudinal fins as substantially claimed (see discussion of claims 1 & 8-10).

#### ***Allowable Subject Matter***

9. Claims 16-20 are allowed.

10. Claims 6, 7, 11 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Shelton et al. '113, Solloway '951, Macedo '657 and Gruenwald '397 each disclose exercise devices having fins and apertures wherein the devices can be moved through water for exercise.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Cronin can be reached on 571-272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 23, 2006

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Primary

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